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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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ANA MARTINEZ,

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Plaintiff,

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vs.

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CAROLYN W. COLVIN, Acting
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Commissioner of Social Security,

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Defendant.

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Case No. 5:15-cv-01003 (VEB)

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DECISION AND ORDER

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I. INTRODUCTION

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In August of 2011, Plaintiff Ana Martinez applied for Supplemental Security
Income (“SSI”) benefits under the Social Security Act. The Commissioner of Social
Security denied the application.

1 Plaintiff, by and through her attorneys, Disability Advocates Group, Michelle
2 Shvarts, Esq. of counsel, commenced this action seeking judicial review of the
3 Commissioner's denial of benefits pursuant to 42 U.S.C. §§ 405 (g) and 1383 (c)(3).

4 The parties consented to the jurisdiction of a United States Magistrate Judge.
5 (Docket No. 11, 12). On May 2, 2016, this case was referred to the undersigned
6 pursuant to General Order 05-07. (Docket No. 18).

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8 **II. BACKGROUND**

9 Plaintiff applied for SSI benefits on August 22, 2011, alleging disability
10 beginning March 15, 2005, due to physical and mental impairments. (T at 13).¹ The
11 application was denied initially and on reconsideration. Plaintiff requested a hearing
12 before an Administrative Law Judge ("ALJ").

13 On December 5, 2013, a hearing was held before ALJ Christine Long. (T at
14 28). Plaintiff appeared with her attorney and testified. (T at 33-37, 42-46). The ALJ
15 also received testimony from Dr. Malcolm Brahms, a medical expert (T at 37-42),
16 and Alan Boroskin, a vocational expert (T at 47-53).

17 On January 14, 2014, the ALJ issued a written decision denying the
18 application for benefits. (T at 10-27). The ALJ's decision became the

19 ¹Citations to ("T") refer to the administrative record at Docket No. 16.

1 Commissioner's final decision on April 28, 2015, when the Appeals Council denied
2 Plaintiff's request for review. (T at 1-6).

3 On May 21, 2015, Plaintiff, acting by and through her counsel, filed this
4 action seeking judicial review of a decision by the Commissioner of Social Security
5 denying her application for benefits. (Docket No. 1). The Commissioner interposed
6 an Answer on December 14, 2015. (Docket No. 15). The parties filed a Joint
7 Stipulation on February 10, 2016. (Docket No. 17).

8 After reviewing the pleadings, Joint Stipulation, and administrative record,
9 this Court finds that the Commissioner's decision must be affirmed and this case be
10 dismissed.

11 12 III. DISCUSSION

13 A. Sequential Evaluation Process

14 The Social Security Act ("the Act") defines disability as the "inability to
15 engage in any substantial gainful activity by reason of any medically determinable
16 physical or mental impairment which can be expected to result in death or which has
17 lasted or can be expected to last for a continuous period of not less than twelve
18 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a
19 claimant shall be determined to be under a disability only if any impairments are of

1 such severity that he or she is not only unable to do previous work but cannot,
2 considering his or her age, education and work experiences, engage in any other
3 substantial work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),
4 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and
5 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

6 The Commissioner has established a five-step sequential evaluation process
7 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520, 416.920. Step
8 one determines if the person is engaged in substantial gainful activities. If so,
9 benefits are denied. 20 C.F.R. §§ 404. 1520(a)(4)(i), 416.920(a)(4)(i). If not, the
10 decision maker proceeds to step two, which determines whether the claimant has a
11 medically severe impairment or combination of impairments. 20 C.F.R. §§
12 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

13 If the claimant does not have a severe impairment or combination of
14 impairments, the disability claim is denied. If the impairment is severe, the
15 evaluation proceeds to the third step, which compares the claimant's impairment(s)
16 with a number of listed impairments acknowledged by the Commissioner to be so
17 severe as to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii),
18 416.920(a)(4)(iii); 20 C.F.R. § 404 Subpt. P App. 1. If the impairment meets or
19 equals one of the listed impairments, the claimant is conclusively presumed to be

1 disabled. If the impairment is not one conclusively presumed to be disabling, the
2 evaluation proceeds to the fourth step, which determines whether the impairment
3 prevents the claimant from performing work which was performed in the past. If the
4 claimant is able to perform previous work, he or she is deemed not disabled. 20
5 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this step, the claimant's residual
6 functional capacity (RFC) is considered. If the claimant cannot perform past relevant
7 work, the fifth and final step in the process determines whether he or she is able to
8 perform other work in the national economy in view of his or her residual functional
9 capacity, age, education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
10 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

11 The initial burden of proof rests upon the claimant to establish a *prima facie*
12 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th
13 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden
14 is met once the claimant establishes that a mental or physical impairment prevents
15 the performance of previous work. The burden then shifts, at step five, to the
16 Commissioner to show that (1) plaintiff can perform other substantial gainful
17 activity and (2) a “significant number of jobs exist in the national economy” that the
18 claimant can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

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1 **B. Standard of Review**

2 Congress has provided a limited scope of judicial review of a Commissioner's
 3 decision. 42 U.S.C. § 405(g). A Court must uphold a Commissioner's decision,
 4 made through an ALJ, when the determination is not based on legal error and is
 5 supported by substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir.
 6 1985); *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).

7 "The [Commissioner's] determination that a plaintiff is not disabled will be
 8 upheld if the findings of fact are supported by substantial evidence." *Delgado v.*
 9 *Heckler*, 722 F.2d 570, 572 (9th Cir. 1983)(citing 42 U.S.C. § 405(g)). Substantial
 10 evidence is more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112, 1119
 11 n 10 (9th Cir. 1975), but less than a preponderance. *McAllister v. Sullivan*, 888 F.2d
 12 599, 601-02 (9th Cir. 1989). Substantial evidence "means such evidence as a
 13 reasonable mind might accept as adequate to support a conclusion." *Richardson v.*
 14 *Perales*, 402 U.S. 389, 401 (1971)(citations omitted). "[S]uch inferences and
 15 conclusions as the [Commissioner] may reasonably draw from the evidence" will
 16 also be upheld. *Mark v. Celebreeze*, 348 F.2d 289, 293 (9th Cir. 1965). On review,
 17 the Court considers the record as a whole, not just the evidence supporting the
 18 decision of the Commissioner. *Weetman v. Sullivan*, 877 F.2d 20, 22 (9th Cir.
 19 1989)(quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir. 1980)).

1 It is the role of the Commissioner, not this Court, to resolve conflicts in
2 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational
3 interpretation, the Court may not substitute its judgment for that of the
4 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9th
5 Cir. 1984). Nevertheless, a decision supported by substantial evidence will still be
6 set aside if the proper legal standards were not applied in weighing the evidence and
7 making the decision. *Brawner v. Secretary of Health and Human Services*, 839 F.2d
8 432, 433 (9th Cir. 1987). Thus, if there is substantial evidence to support the
9 administrative findings, or if there is conflicting evidence that will support a finding
10 of either disability or non-disability, the finding of the Commissioner is conclusive.
11 *Sprague v. Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987).

12 **C. Commissioner's Decision**

13 The ALJ determined that Plaintiff had not engaged in substantial gainful
14 activity since August 22, 2011, the application date. (T at 15). The ALJ found that
15 Plaintiff's degenerative disc disease of the cervical and lumbar spine with back pain;
16 insulin-dependent diabetes mellitus, type 2; diabetic peripheral neuropathy;
17 obstructive sleep apnea; and major depressive disorder were "severe" impairments
18 under the Act. (Tr. 15).

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However, the ALJ concluded that Plaintiff did not have an impairment or combination of impairments that met or medically equaled one of the impairments set forth in the Listings. (T at 15).

The ALJ determined that Plaintiff retained the residual functional capacity (“RFC”) to perform sedentary work as defined in 20 CFR § 416.967 (a), with the following limitations: lift/carry no more than 10 pounds occasionally; sit 6 hours in an 8-hour workday; stand/walk no more than 2 hours in an 8-hour workday; must be able to alternate sitting and standing briefly every 2 hours; only occasional operation of foot controls; only occasional stooping, kneeling, crouching, crawling, climbing stairs/ramps; no climbing ladders, ropes, or scaffolds; only occasional over the shoulder reaching; no work at unprotected heights or around dangerous moving machinery; can understand and remember simple, routine tasks; can carry out short and simple instructions; can make judgments and decisions consistent with simple routine duties; cannot perform work with high production quotas or rapid assembly line work; and limited to only occasional contact with co-workers and public. (T at 16).

The ALJ found that Plaintiff could not perform her past relevant work as a home health aide. (T at 20). Considering Plaintiff's age (38 years old on the application date), education (at least high school), work experience, and residual

1 functional capacity, the ALJ found that jobs exist in significant numbers in the
2 national economy that Plaintiff can perform. (T at 21).

3 Accordingly, the ALJ determined that Plaintiff was not disabled within the
4 meaning of the Social Security Act between August 22, 2011 (the application date)
5 and January 14, 2014 (the date of the decision) and was therefore not entitled to
6 benefits. (T at 22). As noted above, the ALJ's decision became the Commissioner's
7 final decision when the Appeals Council denied Plaintiff's request for review. (T at
8 1-6).

9 **D. Disputed Issues**

10 As set forth in the Joint Stipulation (Docket No. 17, at p. 2), Plaintiff offers
11 two main arguments in support of her claim that the Commissioner's decision should
12 be reversed. First, she contends that the ALJ did not properly address a treating
13 physician opinion. Second, she challenges the ALJ's credibility determination.

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15 **IV. ANALYSIS**

16 **A. Treating Physician Opinion**

17 In disability proceedings, a treating physician's opinion carries more weight
18 than an examining physician's opinion, and an examining physician's opinion is
19 given more weight than that of a non-examining physician. *Benecke v. Barnhart*,

1 379 F.3d 587, 592 (9th Cir. 2004); *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
2 1995). If the treating or examining physician's opinions are not contradicted, they
3 can be rejected only with clear and convincing reasons. *Lester*, 81 F.3d at 830. If
4 contradicted, the opinion can only be rejected for "specific" and "legitimate" reasons
5 that are supported by substantial evidence in the record. *Andrews v. Shalala*, 53 F.3d
6 1035, 1043 (9th Cir. 1995).

7 The courts have recognized several types of evidence that may constitute a
8 specific, legitimate reason for discounting a treating or examining physician's
9 medical opinion. For example, an opinion may be discounted if it is contradicted by
10 the medical evidence, inconsistent with a conservative treatment history, and/or is
11 based primarily upon the claimant's subjective complaints, as opposed to clinical
12 findings and objective observations. *See Flaten v. Secretary of Health and Human
Servs.*, 44 F.3d 1453, 1463-64 (9th Cir. 1995).

14 An ALJ satisfies the "substantial evidence" requirement by "setting out a
15 detailed and thorough summary of the facts and conflicting clinical evidence, stating
16 his interpretation thereof, and making findings." *Garrison v. Colvin*, 759 F.3d 995,
17 1012 (9th Cir. 2014)(quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998)).
18 "The ALJ must do more than state conclusions. He must set forth his own
19 interpretations and explain why they, rather than the doctors', are correct." *Id.*

1 In a letter dated March 6, 2012, Dr. Lloyd Costello, Plaintiff's treating
2 physician, explained that Plaintiff suffers from multiple medical problems, with her
3 pulmonary status, poorly controlled diabetes, and degenerative disc disease of
4 cervical and lumbar spine being the "most debilitating." (T at 504). Her diabetes is
5 "poorly controlled." (T at 504). Plaintiff suffers from "intractable pain secondary to
6 cervical and lumbar disc disease." She requires "around-the-clock opioid therapy,"
7 which has "significant side effects, including sedation and impaired cognitive
8 function." (T at 504). Her ability to carry out activities of daily living is
9 "significantly compromised." (T at 504). Dr. Costello characterized Plaintiff's
10 prognosis as "fair to poor" and opined that she was unable to maintain gainful
11 employment. (T at 505).

12 In June of 2013, Dr. Costello completed a Medical Source Statement of
13 Ability to do Work-Related Activities (physical) form. He diagnosed diabetes,
14 depression, anxiety, asthma, and back pain. Dr. Costello opined that Plaintiff could
15 sit or stand for 5 minutes at a time, and could sit and stand/walk for less than 2 hours
16 in an 8-hour workday. (T at 639). She would need to shift positions at will and
17 would need to take unscheduled breaks every 30 minutes to lie down for 20-30
18 minutes. (T at 640). She can rarely lift less than 10 pounds and never more than
19 that. (T at 640). She has significant limitations with regard to reaching, handling, or

1 fingering. (T at 641). According to Dr. Costello, Plaintiff would likely be “off task”
2 more than 25% of the day and would likely miss work due to her impairments or
3 treatment more than 3 days per month. (T at 641).

4 The ALJ discounted Dr. Costello’s assessments, finding them contradicted by
5 the objective medical evidence. (T at 19). For the following reasons, this Court
6 finds the ALJ’s decision to discount Dr. Costello’s opinions consistent with
7 applicable law and supported by substantial evidence.

8 Dr. Costello’s March 2012 letter is rather conclusory and does not contain
9 citations to supporting clinical findings or other objective evidence. The ALJ is not
10 obliged to accept a treating source opinion that is “brief, conclusory and
11 inadequately supported by clinical findings.” *Lingenfelter v. Astrue*, 504 F.3d 1028,
12 1044-45 (9th Cir. 2007) (citing *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir.
13 2002)).

14 The ALJ also cited medical evidence, including x-rays and MRI findings, that
15 were inconsistent with Dr. Costello’s assessment of very severe limitations. (T at 17-
16 18). Further, the ALJ found that although Dr. Costello’s treatment notes do
17 document pain and other symptoms, they consistently contained unremarkable
18 findings (other than obesity) and did not indicate that Plaintiff was acutely or
19 chronically ill. (T at 19, 384, 386, 388, 390, 392, 394, 396, 398, 568, 570, 572, 574,

1 576, 578, 580-83). *See Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir.
 2 2005)(finding that “discrepancy” between treatment notes and opinion was “a clear
 3 and convincing reason for not relying on the doctor’s opinion regarding” the
 4 claimant’s limitations).

5 Further support for the ALJ’s decision to discount Dr. Costello’s opinion is
 6 found in the assessments of two medical experts. Dr. Seung Ha Lim performed a
 7 consultative examination in October of 2011. Dr. Lim opined that Plaintiff could
 8 stand/walk about 6 hours in an 8-hour work day with appropriate breaks and sit for
 9 the same length of time. (T at 422). He also concluded that Plaintiff could lift/carry
 10 20 pounds occasionally and 10 pounds frequently, and was limited to occasionally
 11 climbing, crouching, and pushing/pulling with her lower extremities. (T at 422).

12 Dr. Malcolm Brahms, a non-examining physician, reviewed the record and
 13 testified at the administrative hearing. Dr. Brahms opined that Plaintiff should avoid
 14 ladders, ropes, and scaffolds and only occasionally kneel, stoop, or work about
 15 shoulder level. (T at 40). However, other than that, Dr. Brahms found that Plaintiff
 16 would have no work-related limitations. (T at 40). Plaintiff’s counsel had the
 17 opportunity, and did, cross-examine Dr. Brahms. (T at 40-42).

18 The ALJ afforded great weight to Dr. Lim’s opinion and found Dr. Brahms’s
 19 statements “well-reasoned and consistent with the record as a whole.” (T at 18). The
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1 ALJ credited Plaintiff's allegations of pain to some degree and assessed additional
2 limitations beyond those found by Dr. Brahms (e.g., a limitation to lifting/carrying
3 no more than 10 pounds; sitting 6 hours in an 8-hour workday; standing/walking 2
4 hours in an 8-hour workday). (T at 16).

5 "The opinions of non-treating or non-examining physicians may also serve as
6 substantial evidence when the opinions are consistent with independent clinical
7 findings or other evidence in the record." *Thomas v. Barnhart*, 278 F.3d 947, 957
8 (9th Cir. 2002); *see also see also* 20 CFR § 404.1527 (f)(2)(i) ("State agency medical
9 and psychological consultants and other program physicians, psychologists, and
10 other medical specialists are highly qualified physicians, psychologists, and other
11 medical specialists who are also experts in Social Security disability evaluation.").

12). Indeed, "an ALJ may give greater weight to the opinion of a non-examining
13 expert who testifies at a hearing subject to cross-examination." *Andrews v. Shalala*,
14 53 F.3d 1035, 1042 (9th Cir. 1995) (citing *Torres v. Secretary of H.H.S.*, 870 F.2d
15 742, 744 (1st Cir. 1989)).

16 Plaintiff argues that the ALJ should have weighed the evidence differently and
17 resolved the conflict in favor of Dr. Costello's opinions. However, it is the role of
18 the Commissioner, not this Court, to resolve conflicts in evidence. *Magallanes v.*
19 *Bowen*, 881 F.2d 747, 751 (9th Cir. 1989); *Richardson*, 402 U.S. at 400. If the

1 evidence supports more than one rational interpretation, this Court may not
2 substitute its judgment for that of the Commissioner. *Allen v. Heckler*, 749 F.2d 577,
3 579 (9th 1984). If there is substantial evidence to support the administrative
4 findings, or if there is conflicting evidence that will support a finding of either
5 disability or nondisability, the Commissioner's finding is conclusive. *Sprague v.*
6 *Bowen*, 812 F.2d 1226, 1229-30 (9th Cir. 1987). Here, the ALJ's decision was
7 supported by substantial evidence, including a consultative examiner opinion (Dr.
8 Lim), testimony from a medical expert (Dr. Brahms), and a reasonable review of the
9 medical record, and must therefore be sustained. See *Tackett v. Apfel*, 180 F.3d
10 1094, 1098 (9th Cir. 1999)(holding that if evidence reasonably supports the
11 Commissioner's decision, the reviewing court must uphold the decision and may not
12 substitute its own judgment).

13 **B. Credibility**

14 A claimant's subjective complaints concerning his or her limitations are an
15 important part of a disability claim. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d
16 1190, 1195 (9th Cir. 2004)(citation omitted). The ALJ's findings with regard to the
17 claimant's credibility must be supported by specific cogent reasons. *Rashad v.*
18 *Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative evidence of
19 malingering, the ALJ's reasons for rejecting the claimant's testimony must be "clear

1 and convincing.” *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995). “General
2 findings are insufficient: rather the ALJ must identify what testimony is not credible
3 and what evidence undermines the claimant’s complaints.” *Lester*, 81 F.3d at 834;
4 *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993).

5 However, subjective symptomatology by itself cannot be the basis for a
6 finding of disability. A claimant must present medical evidence or findings that the
7 existence of an underlying condition could reasonably be expected to produce the
8 symptomatology alleged. See 42 U.S.C. §§423(d)(5)(A), 1382c (a)(3)(A); 20 C.F.R.
9 § 404.1529(b), 416.929; SSR 96-7p.

10 In this case, Plaintiff testified as follows: She was 40 years old on the date of
11 the administrative hearing. She has a driver’s license, but does not drive. (T at 34).
12 She graduated from high school and attended some college. She has four children,
13 ages 21, 11, 9, and 4. (T at 34-35). She does not sleep well and suffers from
14 paranoia, depression, and bipolar disorder. (T at 42). She wakes up tired and
15 depressed. (T at 42). Her main problems are depression and arthritis in her back and
16 neck. (T at 42). Her activities are minimal. She is in constant pain and does not
17 leave her house alone. (T at 43). She does not complete any household chores or
18 cook. (T at 43-44). She lives with her husband and mother. (T at 44). They take
19 care of the children. (T at 44). She has regular visits with a psychiatrist and

1 therapist. (T at 45). Depression causes non-compliance with her insulin regimen,
2 which in turn complicates her diabetes. (T at 45-46). Although she has back pain, no
3 one has ever recommended surgery. (T at 46).

4 The ALJ concluded that Plaintiff's statements regarding the intensity,
5 persistence, and limiting effects of the symptoms were not fully credible. (T at 20).

6 For the reasons that follow, this Court finds the ALJ's decision consistent with
7 applicable law and supported by substantial evidence. First, although lack of
8 supporting medical evidence cannot form the sole basis for discounting pain
9 testimony, it is a factor the ALJ may consider when analyzing credibility. *Burch v.*
10 *Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). In other words, an ALJ may properly
11 discount subjective complaints where, as here, they are contradicted by the weight of
12 the objective medical evidence. *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d
13 1155, 1161 (9th Cir. 2008); *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir.
14 2002).

15 Second, Plaintiff admitted being non-compliant with her insulin, which
16 exacerbated her diabetes. Although she claimed this was related to her depression,
17 the ALJ reasonably found this claim unsupported by the evidence. See *Molina v.*
18 *Astrue*, 674 F.3d 1104, 1114 (9th Cir. 2012)(“Although [claimant] provided reasons
19 for resisting treatment, there was no medical evidence that ... resistance was

1 attributable to her mental impairment rather than her own personal preference, and it
2 was reasonable for the ALJ to conclude that the ‘level or frequency of treatment
3 [was] inconsistent with the level of complaints.’’’)(quoting SSR 96-7p).

4 With regard to Plaintiff’s alleged mental health impairments, the ALJ
5 reasonably relied on the treatment notes of Dr. Hassan Mahfoozi, a treating
6 psychiatrist, and the opinion of Dr. Ernest Bagner, a consultative psychiatric
7 examiner, both of which indicated only mild-to-moderate functional limitations
8 related to mental health impairments. (T at 18). *See Tommasetti v. Astrue*, 533 F.3d
9 1035, 1039 (9th Cir. 2008)(“If the ALJ’s credibility finding is supported by
10 substantial evidence, the court may not engage in second-guessing.”).

11 For the reasons outlined above, this Court finds no reversible error with regard
12 to the ALJ’s credibility determination.

13 V. CONCLUSION

14 After carefully reviewing the administrative record, this Court finds
15 substantial evidence supports the Commissioner’s decision, including the objective
16 medical evidence and supported medical opinions. It is clear that the ALJ thoroughly
17 examined the record, afforded appropriate weight to the medical evidence, including
18 the assessments of the treating and examining medical providers and medical
19 experts, and afforded the subjective claims of symptoms and limitations an

1 appropriate weight when rendering a decision that Plaintiff is not disabled. This
2 Court finds no reversible error and because substantial evidence supports the
3 Commissioner's decision, the Commissioner is GRANTED summary judgment and
4 that Plaintiff's motion for judgment summary judgment is DENIED.

5

6 **VI. ORDERS**

7 IT IS THEREFORE ORDERED that:

8 Judgment be entered AFFIRMING the Commissioner's decision and
9 DISMISSING this action, and it is further ORDERED that

10 The Clerk of the Court file this Decision and Order, serve copies upon counsel
11 for the parties, and CLOSE this case.

12 DATED this 5th day of July, 2016.

13 /s/Victor E. Bianchini
14 VICTOR E. BIANCHINI
15 UNITED STATES MAGISTRATE JUDGE
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